U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

Issue Date: 15 May 2007

……
In the Matter of

M.Z.[1]
Claimant
v.
TIDEWATER CONSTRUCTION
Employer
And
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party in Interest
……..

Case No. 2006 LHC 01330
OWCP No. 6-197408

Decision and Order

The Bridge of Lions, a historic landmark spanning the Mantanzas River in St. Augustine, Florida, for some time now, has been undergoing much needed major renovations. To refurbish the historic structure without disrupting the flow of traffic along the busy thoroughfare connecting the city with its eastern shore, planners decided to construct a temporary bridge with a moveable lift which raises and lowers to allow the passage of boat traffic, when necessary, and vehicular traffic the rest of the time. Claimant, in this matter, injured his left knee on August 31, 2005, while working on this project. His Employer paid him workers' compensation benefits under the Florida statute, but Claimant insists he is covered by the federal Longshore Act. Thus, jurisdiction is the issue contested by the parties and the only issue litigated in this proceeding. All other issues have been stipulated, including the average weekly wage of $815.45, and an agreement to accept the treating physician's impairment rating of the left lower extremity if Longshore Act coverage is established. We turn, then, to the basic facts before addressing the parties' legal arguments.

[1] Effective August 1, 2006, the U.S. Department of Labor implemented a policy to avoid using claimants' names in the caption or body of any Black Lung or Longshore decision or order. In lieu of identifying the claimant by name, the policy requires the use of the claimant's initials.

Findings of Fact

The record shows that Claimant was employed as a carpenter to work on the fender system of the temporary bridge. Tr. 21; Cl. Dep. at 8. The fender system is a structure, not connected to the bridge, consisting of piles driven into the river bottom to which heavy wooden timbers are affixed to protect the actual bridge structure. Maritime navigation lights are mounted on the fender to aid the passage of watercraft approaching the bridge.

For a period of two and one-half months preceding the accident, Claimant's day began, shoreside, where he slipped into a lifejacket and boarded a johnboat which transported him and his co-workers to a crane barge in the middle of the river. Tr. 21. Aboard the crane barge, which was spudded to the river bottom, the Employer stored three or four small floating work platforms or "floats." Tr. 21-22. Each float appears to be rectangular in form and approximately 6 to 8 feet wide and 10 to 12 feet long. CX 1. As the workday began, the crane, or "cherry picker," on the barge would lift each float and place it in the water. The workers placed their tools on the floats, and, at times, boarded the johnboat, and, at times, boarded the floats which were pulled by the johnboat about two to three hundred feet to the fender system. Tr. 21-22; Cl. Dep. at 22-23. Once towed to the fender, the floats would tie-up to the fender pilings. Claimant worked on the fender system from the float for the remainder of the shift. Tr. 22-24, 27-28.

At the end of the shift, the johnboat pulled the floats back to the crane barge where they would lie alongside as each float, one by one, was hoisted back on the barge. Tr. 25. From the barge, the workers then boarded the johnboat for transport back to land. Tr. 25.

On the day of the accident, Claimant had completed his work on the fender system. His float had been towed back to the crane barge where it was last in line to be hoisted back aboard the barge by the crane. Tr. 24-25. The float was tied to the barge in preparation for the hoist. At his deposition, Claimant testified that the floats were "tied" around the barge. Dep. at 26-27. At the hearing, he clarified that the float was "tied" to the barge in the sense that he had, from his position on the float, thrown one end of a 30-foot rope to a coworker on the barge, and the coworker was holding the other end of the rope. Tr. 24, 29-30. The rope allowed the float to drift a few feet away from the barge, but within reach of the cherry picker, as it bobbed in the current waiting for the hoist. Tr. 24-25, 29. As Claimant prepared to hook the hoist to the float, he stepped on a spare piece of fender cable

which was lying on the float and twisted his knee which caused him to fall. Tr. 26, 31-32; Cl. Dep. at 27-28. At the time of the accident, Claimant was on the float. The cherry picker on the barge had not yet hooked up to the float, and the hoisting operation had not yet begun. Tr. 31.

The accident resulted in a tear of Claimant's anterior cruciate ligament in the left knee. Comp. Ex. 3; Tr. 31, 32. Employer subsequently paid for Claimant's medical care, treatment, and therapy, Comp Ex 4, 5, and paid compensation, as noted previously, under Florida law. Claimant has since returned to work.

Conclusions of Law

Employer derides Claimant's attempt to attach federal Longshore jurisdiction to his endeavors as a bridge builder. A bridge, Employer reasons, aids highway transportation, not maritime commerce; and those who build bridges have, with notable exceptions, never been granted Longshore coverage. Embracing Kehl v. Martin Paving Co., 34 BRBS 121 (2000), as controlling precedents, and rejecting Walker v. PCL Haraway/Interbeton, 34 BRBS 176 (2000) as clearly distinguishable, Employer emphasizes the lack of any evidence in this record addressing the three prongs Employer believes provide the only avenues of recovery available to Claimant: either the bridge under construction must aid maritime navigation, *see*, LeMelle v. B. F. Diamond Construction Co., 674 F.2d 296 (4th Cir. 1982), cert. denied, 459 U.S. 1177 (1983), or Claimant's bridge work duties must include loading or unloading a vessel in navigable waters, *See,* Gilliam v. Wiley N. Jackson Co., 659 F.2d 54, 13 BRBS 1048 (5th Cir. 1981), cert. denied, 459 U.S. 1169 (1983), or he must be injured aboard a vessel on navigable waters. Asserting that the record is baron of evidence establishing any of the exceptions Employer holds forth as Claimant's only routes to relief, Employer urges dismissal of the claim. Its perspective, however, may be a bit too narrow. It would appear there are circumstances, not cabined by the exceptions as Employer describes them, in which bridge workers still may be maritime employees.

Bridge Building

Coverage of bridge construction workers under the Longshore Act is a fact-specific proposition. Because it is attached to land and deemed an extension of the land, a bridge is not a covered situs, Crapanzano v. Rice Mohawk, U.S. Constr. Co., Ltd., 30 BRBS 81 (1996), and those who build bridges are generally not considered maritime workers. Crapanzano, *supra*; Kennedy v. American Bridge Co., 30 BRBS 1 (1996); Pulkoski v. Hendrickson, 28 BRBS 298 (1994) (bridge

construction worker not a maritime employee); Johnsen v. Orfanos Contractors, Inc., 25 BRBS 329 (1992) (bridge painter on completed bridge not a maritime employee); Nold v. Guy F. Atkinson Co., 9 BRBS 620 (1979) (Miller, dissenting), dismissed, 784 F.2d 339 (9th Cir. 1986). Employer relies, in particular, upon Martin Paving Co. v. Kehl, 152 F.3d 933 (11th Cir.1998), a case in which a decedent who fell from a bridge was not engaged in loading or unloading ships and failed the status requirement. On remand, in Kehl v. Martin Paving Co., 34 BRBS 121 (2000), the Board determined that since the bridge was in use for highway traffic over the Inter-coastal Waterway, it was an extension of the land when the worker fell from the bridge landing on the base of the bridge, also an extension of the land, and he died before he careened into the water. To be sure, the Board in Kehl reasoned that the worker was not injured on navigable waters; but Kehl is not applicable here.

Bridge Builders as Maritime Employees

Three notable exceptions, with nuanced caveats to be sure, hedge the general rule involving coverage of bridge construction workers like Kehl. First, Longshore coverage is available if the worker is, at the time of injury, engaged in loading or unloading maritime cargo on a vessel, Gilliam v. Wiley N. Jackson Co., 659 F.2d 54, (5th Cir. 1981), cert. denied, 459 U.S. 1169 (1983); Browning v. B. F. Diamond Construction Co., 676 F.2d 547, (11th Cir. 1982), cert. denied, 459 U.S. 1170 (1983) (rig foreman unloading construction materials from a vessel for bridge construction is a covered employee), Smith v. Universal Fabricators, Inc., 21 BRBS 83 (1988), aff'd, 878 F.2d 843, (5th Cir 1989), cert. denied, 493 U.S. 1070 (1990); Cf. Wilson v. General Engineering and Machine Works, 20 BRBS 173, 176 n. 4 (1988), Kennedy v. American Bridge Co., 30 BRBS 1 (1996). This exception may be inapplicable, however, if the cargo is non-maritime material. *See*, Crapanzano, *supra*.

Second, the Longshore Act applies if the bridge itself, or the worker's job, involves an aid, rather than a hindrance, to maritime navigation. Le Melle v. B. F. Diamond Construction Co., 674 F.2d 296 (4th Cir. 1982), cert. denied, 459 U.S. 1177 (1983) (draw bridge aided navigation); Peter v. Arrien, 325 F.Supp. 1361 (E.D. Pa. 1971), aff'd, 463 F.2d 252 (3d Cir. 1972) (a crane operator demolishing an existing bridge, thereby aiding maritime navigation, drowned when the crane stationed on a temporary causeway toppled into the water); Davis v. Dept of Labor, 317 U.S. 249 (1942) (a structural steel worker hired to help dismantle an abandoned drawbridge fell off the barge and drowned).

The third and, for our purposes here, crucial exception applies when the bridge worker is, at the time of injury, working on navigable waters. Walker v. PCL Hardaway, 34 BRBS 176 (2000); Hardaway Contracting Co. v. O'Keeffe, 414 F.2d 657 (5th Cir. 1968) (a laborer building a bridge was transported to work by boat and was transferring diesel fuel tanks from one vessel to another when he slipped, fell and drowned); Dixon v. Oosting, 238 F.Supp. 25 (E.D.Va. 1965) (a pile driver operator constructing a trestle bridge was injured approximately 1.5 miles from land on equipment which rested on previously made pilings that had no physical connection with the land or the bridge under construction). When a case falls within the third exception, as the Board observed in Kehl, it is: "not the designation of those employees as 'bridge workers' or their work on a bridge itself which conveyed coverage. Rather, it was the circumstances of the injuries, deaths and employment upon actual navigable waters which determined the applicability of the Act."

Upon What Did Claimant Work?

Leaving aside the fact that the fender, unlike the bridge, was not an extension of the land and was not attached to the bridge and that navigation lights mounted on the fenders protect the bridge but also aided passing sailors, and further eschewing consideration of the ability of the temporary bridge to raise up to allow boat passage, thus potentially qualifying the temporary bridge as an aid to navigation like the draw bridge in LeMelle; the threshold issue disputed by the parties is whether Claimant was injured while working on a vessel or a platform. Employer insists he was injured while working on a "platform" attached by a rope to a fixed or spudded barge; and therefore, Employer reasons, he was not injured while working on a vessel on navigable waters. Emp. Br. at 3-4. Distinguishing Walker v. PCL Hardaway, *supra*, a case which Claimant cites with prominence in his brief, Cl Br. at 9-10, Employer emphasizes that the Walker barge, unlike its barge, was not spudded, and while the Walker barge was deemed a vessel, Employer's barge was a fixed platform.

Claimant rebuffs Employer's analysis with an array of cases he believes otherwise supports his claim, citing pronouncements ranging from the Supreme Court decisions in Director v. Perini North River Assoc., 459 U.S. 297 (1983); Stewart v. Dutra Construction Co., 543 U.S. 481 (2005); and Herb's Welding, Inc. v. Gray, 470 U.S. 414 (1985), to the Eleventh Circuit Court of Appeals ruling in Browning v. B.F. Diamond Construction Co., 676 F.2d 547 (11th Cir. 1982), within whose jurisdiction this case arises, and the Board's decisions in Walker, *supra*, and Gonzalez v. Tutor Saliba, BRB No. 05-0406 (Oct. 26, 2005). Because both parties deem it precedents, we consider Walker first.

In Walker, the Board found a bridge worker was covered by the Longshore Act under circumstances in which he was injured while standing on a platform suspended from a crane sitting aboard a barge standing on jack-up legs which were deployed to the bottom of Chesapeake Bay. Claimant analogizes Employer's crane barge to the Walker barge, but Employer emphasizes a perceived point of distinction. In Walker, the barge supporting the crane suspending the platform was a vessel, and thus Walker's injury occurred on a vessel on navigable waters. In this instance, Employer argues that its fixed or spudded barge was not a vessel, and, therefore, Claimant was not, unlike Walker, injured while working on a vessel on navigable waters. Emp. Br. at 3-4.

With due deference to the parties, however, both seem to misapply Walker. Claimant, here, was not injured on the barge, so it matters little whether Employer's crane barge was a vessel. He was injured on the float, and the record shows that the float served many functions. The Employer designated the platform Claimant stood upon as a "float," and, except when it was hoisted onto the spudded barge at night, that is precisely what it did. It provided floating transportation for Claimant's supplies and tools from the barge to the fender, and, at times, provided transportation for Claimant himself who rode the float as it was pulled into position by the johnboat. Tied to a fender pile, it served temporarily as a floating work platform. At the end of the shift, it again served as a float in tow to transport tools, and, from time to time, Claimant back to the barge. Quantitatively, the time the float spent in transportation was minimal compared with the time it spent as a floating platform; but its transport function was not unimportant to the Employer's method of getting tools to the workstations. Nevertheless, it appears the float's transportation functions was incidental to its function as work platform, Bernard v. Binnings Constr. Co., Inc., 741 F.2d 824 (5th Cir. 1984), but that is not a crucial factor here.

At the time of the accident, Claimant was on the float as it bobbed near the barge held loosely in place against the current by a rope held by Claimant on the float and a coworker on the barge. The rope provided no support which might take the place of buoyancy that a spudded barge or land itself would provide, and it did not moor the float to the barge. Of course, the mere act of floating does not make a platform a vessel,[2] but neither did the rope line held by Claimant and a co-worker

[2] A small raft can, indeed be a vessel, *see*, Bernard v. Binnings Constr. Co., Inc., 741 F.2d 824 (5th Cir. 1984), but "The fact that it floats on the water does not make it a ship or a vessel…" Cope v. Vallette Dry-Dock Co., 119 U.S. 625, 627 (1887).Waguespack v. Aetna Life & Casualty Co., 795 F.2d 523 (5th Cir. 1986), cert. denied, 479 U.S. 1094 (1987) (small floating work platform permanently located in a slip and used to facilitate removal of grain barge covers is not a vessel).

render the raft a fixed platform. *See*, Stewart, *supra*. Indeed, until the float was hoisted by the crane, the float was still afloat in the current.[3] Yet, Employer insists that the floating float was a fixed platform not a vessel.[4]

For decades, the courts have, in Longshore Act and Jones Act decisions, struggled with the definition of a "vessel," pondering great profundities equally with minute kernels of fact in cases which might include among the ranks of employees aboard vessels, "three men in a tub," Jonah in the belly of the whale, and "Winkin', Blinkin', and Nod" in a wooden shoe, which, of course, had a raked bow. Keeping the complexity of the problem in perspective, however, we learn from Webster's Third International Dictionary (unabridged) at page 1735, that a platform is: "a horizontal flat surface usually higher than the adjoining area." It may be permanent or temporary. Webster's further tells us at page 1874 that a raft is: "a flat structure for support or conveyance (as of people or cargo) on a body of water;" at page 871, that a "float," when used as a noun, is: "a flat-bottomed boat: raft…;" and at page 2582, Webster's includes within the definition of watercraft: "equipment for water transport;" a description entirely consistent with the traditional vernacular as described the Supreme Court in Stewart.[5] It follows that a raft can be a platform and a platform can be a raft; both can be a float, and all can be a watercraft.

The record shows that the work platform here, when in use, was synonymous with a float which was used as a raft. Had the float been hoisted above that water at the time of injury, Walker would, by analogy, suggest that it

---

[3] *See*, Walker, *supra*.

[4] Employer's argument is reminiscent of a landmark case in Canadian jurisprudence. The celebrated holding in Regina v. Ojibway, a case not officially reported but which may be found in 8 Criminal Law Quarterly at 137 (Toronto, 1966), illustrates how the definition of a term may be different from the way people perceive the object of the definition. In Ojibway, the court interpreted the meaning of "small bird" under the Ontario Small Bird Act. The issue in the case was whether a pony saddled with a feather pillow was a small bird within the meaning of the law. In an opinion by the Honorable Blue, J., the court concluded that for purposes of the Small Bird Act, all two-legged, feather-covered animals were birds but the legislative intent clearly was not to make two legs the minimum requirement; therefore, a horse with feathers on its back must be deemed, for purposes of the Act, to be a bird and "a fortiori, a pony with feathers on its back is a small bird." The judge could have, but did not, include the finding in his opinion that a small bird is a pony, but had he done so this opinion, by analogy, would be on " all fours" in support of Employer's argument here.

The court was quick to note, however, that different things may take on the same meaning for different people, and to this I add that the same thing may take on different meanings to different people. Like Ojibway, however, the float in this case is a horse of a different color, for a horse with feathers on its back may be defined as a bird but to a bystander it may still be perceived as a horse. We find ourselves in the position of the bystander. Employer asserts that a floating platform attached loosely by a single, flexible rope line to a spudded barge is not a vessel but a fixed platform; and therefore, the injury did not occur aboard a vessel on navigable waters. Yet a horse with a feather pillow on its back is no less a horse, and a float afloat may be a raft or a platform; but it is no less upon the water than a boat defined as a vessel.

[5] In Stewart v. Dutra Constr., *supra*, at 497, the Supreme Court ruled that under Section 3 of the Longshore Act, a vessel is: "… any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment." Thus, in Stewart a dredge which moved 30 to 50 feet by manipulating its cables and anchors every couple of hours was deemed a vessel.

might fairly be construed as an extension of the spudded barge, which Claimant argues is a vessel and Employer deems a fixed platform; but the hoisting hook had not yet been set; and the accident occurred on the float, which, at the time, was a floating platform or raft. The rope line Claimant held was not affixed to the barge, but held in the hand of a worker, and it did not moor the raft to the barge. The float, at that point, was neither a land-based fixture, an extension of land or bridge, nor was it a fixed platform annexed to a spudded barge.[6] Rather, when Claimant was injured, it was a raft floating on navigable waters near the barge. Under these circumstances, for purposes of establishing Longshore jurisdiction in this matter, it matters not whether the raft was a vessel, a mobile platform, a float, or a watercraft.[7]

---

[6] Employer contends that a fixed platform is not a vessel in navigation. Rodrique v. Aetna Casualty & Surety Co., 395 U.S. 352; Stansbury v. Sikorski Aircraft, 681 F.2d 948 (5th Cir. 1982), cert. denied, 459 U.S. 1089 (1982). A raft, however, may be a vessel. Several cases illustrate that floating structures are not always what they seem. Although these cases deal primarily with barges that have become work platforms, a case dealing with a small raft is Bernard v. Binnings Constr. Co., Inc., 741 F.2d 824 (5th Cir. 1984). In Bernard, the Plaintiff who worked aboard a work punt or small raft was asserting that he was a seaman under the Jones Act, and the question considered by the court was whether the punt was a Jones Act vessel. Floating work platforms which were determined not to be vessels had at least some of the following criteria in common:
(1) The structures were constructed/re-constructed for use primarily as work platforms;
(2) The structures were moored/secured when the injury occurred;
(3) Although "capable" of movement and sometimes moved, the transportation function was merely incidental to the primary purpose of serving as a work platform;
(4) The structure generally had no navigational lights and/or
navigational equipment;
(5) The structures had no means of self-propulsion;
(6) The structures were not registered with the Coast Guard;
(7) The structures did not have crew quarters/galley. Bernard, 741 F.2d 824; Green v. C.J. Langenfelder & Sone, Inc., 30 BRBS 77 (1996); Burchett v. Cargill, Inc., 48 F.3d 173 (5th Cir. 1995); Sharp v. Johnson Bros. Corp., 917 F.2d 885 (5th Cir. 1990), amended Sharp v. Johnson Bros. Corp., 923 F.2d 46 (5th Cir. 1991); Ellender v. Kiva Constr. & Eng'g, 909 F.2d 803 (5th Cir. 1990); Menard v. Brownie Drilling Co., 1991 WL 194756, 1991 U.S. Dist. LEXIS 13531 (E.D. La. 1991); Gremillion v. Gulf Coast Catering Co., 904 F.2d 290 (5th Cir. 1990); Ducrepont v. Baton Rouge Marine Enters., Inc., 877 F.2d 393 (5th Cir. 1989); Davis v. Cargill, Inc., 808 F.2d 361 (5th Cir. 1986); *See also*, Blanchard v. Engine & Gas Compressor Servs., 575 F.2d 1140 (5th Cir. 1978), question certified, 590 F.2d 594 (5th Cir. 1979); Cook v. Belden Concrete Prods., Inc., 472 F.2d 999 (5th Cir.), cert. denied, 414 U.S. 868 (1973); *See also,* Ducote v. Keeler & Co., Inc., 953 F.2d 1000 (5th Cir. 1992) (raked bow); *But see*, Tonnesen v. Yonkers Contracting Co., Inc., 82 F.3d 30 (2d Cir. 1996).

[7] Until the Supreme Court decided Stewart, the basic criteria used to establish whether a structure was a vessel were: "the purpose for which [it] is constructed and the business in which it is engaged." The Robert W. Parsons, 191 **U.S.** 17 (1903). The business or employment of a watercraft was determinative, rather than its size, form, capacity, or means of propulsion. *See,* Cope v. Vallette Dry-Dock Co., 119 U.S. 625, 627. It appears, in this instance, that the raft's transportation function was subordinate or incidental to its main purpose as a work platform, *See*, Green v. C.J. Langenfelder & Son, Inc., 30 BRBS 77 (1996); however, it was, when in tow, practically capable of transporting Claimant and his tools from the barge to the fender system, and, at times, it did just that; and it could, presumably, qualify as a watercraft under Section 32, if not a vessel within the meaning of the Jones Act. *See*, Stewart, *supra*. *Compare*, Bernard v. Binnings Constr. Co., Inc., 741 F.2d 824 (5th Cir. 1984), *and* Gremillion v. Gulf Coast Catering Co., 904 F.2d 290 (5th Cir. 1990), *with* Manuel v. P.A.W. Drilling & Well Service, Inc., 135 F.3d 344 (5th Cir. 1998).

Maritime Employment

Maritime employment is work which is neither transiently nor fortuitously done over navigable waters. Bienvenu v. Texaco, Inc., 124 F.3d 692 (5th Cir. 1997). In this instance, Claimant's work over navigable waters was neither transient nor fortuitous. He was daily required to wear a lifejacket and was transported by boat to the barge where he boarded the johnboat or the raft to be transported to the worksite. From his floating raft, he performed his tasks, then returned by boat to land after his shift. He was injured on navigable waters in the course of his employment on those waters. As such, he need not be aboard a vessel to secure coverage. Caserma v. Consolidated Edison Co., 32 BRBS 25 (1998).[8]

As the Supreme Court ruled in Perini, a worker injured on navigable waters: "satisfies the status requirement in § 2(3), and is covered under the LHWCA…," explaining: "We consider these employees to be 'engaged in maritime employment' not simply because they are injured in a historical maritime locale, but because they are required to perform their employment duties upon navigable." Perini, *supra* at 324. Thus, in Caserma, the Board, relying on Perini, observed that "… the Supreme Court in *Perini* never imposed the requirement that an employee must be injured on a vessel on navigable waters in order to be covered under the Act."

The test of maritime employment in this situation thus straddles the glottic gyrations that defining a vessel might entail and imposes no requirement that Claimant work aboard a vessel as a predicate to Longshore Act jurisdiction. Rather, the Board has, more expansively, determined that: "coverage under *Perini* [is] based not on whether employees sustained their injuries while on a vessel, but whether they were afloat upon, over, or in actual navigable waters." Caserma, *supra*. Consequently, a worker injured on actual navigable waters while in the course of his employment on those waters is a maritime employee, and regardless of the nature of the work being performed: "a claimant injured while afloat on navigable waters satisfies both the situs and status requirements and is covered under the Act, unless he is specifically excluded from coverage by another statutory provision." Griffin v. McLean Contracting Co., BRB No. 96-0759, (Jan. 29, 1997).[9] Longshore coverage is determined by the nature of the place of work at the moment of injury. *See also*, Turk v. Eastern Shore Railroad, Inc., 34 BRBS 27, (2000).

[8] When a claimant is not injured on navigable waters, he must then show that his employment had some connection with the loading, unloading, repair, or construction of ships. *See*, Herb's Welding, Inc. v. Gray, 470 U.S. 414 (1985).
[9] Griffin is published at http://www.dol.gov/brb/decisions/lngshore/unpublished/janjun97/96-0759.HTM

In this instance, Claimant was required to perform his job duties upon a raft floating on navigable waters, and he was actually aboard the raft, floating on navigable waters at the time of the injury. Under these circumstances, I find and conclude that he properly invokes Longshore Act coverage. Perini, *supra*. Accordingly;

ORDER

IT IS ORDERED that Employer provide to Claimant all benefits to which he is entitled under the Longshore and Harbor Workers' Compensation Act as a consequence of the August 31, 2005, injuries to his left knee.

A

STUART A. LEVIN
Administrative Law Judge